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ABSTRACT

A legalization program for illegal aliens living in the United States is examined in this statement by Doris Meissner, Acting Commissioner of the Immigration and Naturalization Service (INS). Meissner states that the Administration's current proposed legislation is designed to regain control of the immigration process through the development of more effective enforcement measures. This legislation is said to be based on the rationale that: (1) qualified aliens would be able to contribute more to society if they were granted the right to open participation; (2) the enactment of employers sanctions legislation would curtail further uncontrolled hiring of illegal aliens; and (3) legalization would enable the INS to target its enforcement resources on new flows of illegal aliens and avoid devoting limited investigative resources equity claims by aliens. Meissner explains that the current bill would provide "temporary residence status" to illegal aliens who entered the United States prior to January 1, 1980 and have had a continuous residence since that time. Meissner says that the Administration supports a one time legalization program but does not believe that the process of legalization should begin until new enforcement measures, such as employers sanctions have been instituted. (Author/JCD)

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Department of Justice

STATEMENT

OF

DORIS M. MEISSNER
ACTING COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND
INTERNATIONAL LAW
HOUSE OF REPRESENTATIVES

CONCERNING

LEGALIZATION

ON

OCTOBER 15, 1981

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Mr. Chairman, Members of the Committee:

I am pleased to appear before you today to testify concerning a legalization program for illegal aliens living in the United States. This program is one element of President Reagan's package of proposals to curb illegal immigration. The specific focus of today's hearing is the proposed legislation which would provide a temporary residency status for illegal aliens in the United States who meet the qualifications established in this proposal.

As the Attorney General pointed out in his appearance on July 30, 1981 before the joint subcommittees of the Senate and House, the overriding purpose of this Administration's proposals is to make our immigration laws and policies more realistic -- and to enforce those laws effectively.

Many countries in Latin America, the Caribbean, Europe, Asia and Africa are sources of illegal migration to the United States. However, an estimated 60 percent of the illegal aliens in this country are Mexican nationals. In the last fourteen years, apprehensions of deportable aliens by the Immigration and Naturalization Service (INS) have increased twenty-fold. A report by Census Bureau demographers for the Select Commission on Immigration and Refugee Policy estimates the illegal migrant population in the range of three and one-half to 6 million at any one time. We assume that the illegal migrant population is in part

a temporary population which fluctuates seasonally, however, some migrants return to their homeland after stays of one to five years, while other illegal aliens come with the intention of staying permanently and do so. Violators of the immigration law are not only those who enter without inspection or with false or fraudulent documents, but also those who enter legally with nonimmigrant visas, and either overstay those visas, or violate their terms by working in the United States.

The exact characteristics of the illegal migrant population are unknown. The lack of information on this population makes it impossible to determine the precise demographic or economic impact of illegal migration, but certain implications are self-evident.

Attempts by the federal government, including initiatives within the Congress, to formulate a policy to control the illegal migrant phenomenon have, so far, failed. Various states have taken action on the problem. A California law which prohibits the employment of illegal migrants was upheld by the U.S. Supreme Court; however, the California law, like similar laws passed by ten other state legislatures, has not been effectively enforced.

The presence of an ever increasing number of illegal aliens in the country clearly demonstrates that our prevailing national policies, intended to control the influx of immigrants across our borders, have failed.

The Administration is now proposing a comprehensive and integrated set of initiatives to regain control of the immigration process. This legislation is premised on two facts: that there are between 3 and 6 million illegal aliens in this country; and that their numbers are continuing to grow from one-quarter to one-half million each year.

Together, these proposals should substantially reduce illegal immigration by increasing enforcement of existing programs, prohibiting the employment of illegal aliens, expanding opportunities to work lawfully in the U.S., by raising immigration ceilings for Canada and Mexico, establishing the experimental 50,000 per year temporary worker program, and legalizing aliens who are illegally in the country at the present time.

Today, I will discuss the provisions of the proposed temporary resident status for illegal aliens legislation. This legislation would permit illegal aliens who were present in the United States prior to January 1, 1980, and who are not otherwise excludable, to apply for a new status of "temporary resident." This status would be renewable every three years, and after a total of ten years of continuous residence, from the date of entry to the U.S., temporary residents would be eligible to apply for permanent resident status and eventually citizenship.

The United States has neither the resources, the capability, nor the desire to uproot and deport millions of illegal aliens, many of whom have become integral members of their communities. By granting limited legal status to the productive and law-abiding members of these communities, this proposal acknowledges the reality of the situation that confronts us due to the failure of past policies.

The existence of a large illegal migrant population within our borders violates the basic concept that we are a nation under law, and this cannot be tolerated. The costs to society of permitting a large group of persons to live in an illegal status are enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding -- which occurs even if the alien is the victim, -- to report an illness that may constitute a public health hazard, or to disclose a violation of U.S. labor laws.

In seeking a solution to this problem, the Administration has considered a range of options, including deportation efforts, the use of existing enforcement procedures and legalization. Attempts at massive deportation could be destructive to U.S. civil liberties, costly, could result in legal challenges and ineffective. The only time in U.S. history when such a massive deportation effort occurred was in the mid-1950's when the INS

expelled or repatriated more than 1 million aliens. This was done at tremendous cost and, more importantly, violated the civil liberties of some Mexican Americans who were forcibly repatriated to Mexico. Such an effort is unacceptable today.

Legalization -- accompanied by new, more effective enforcement measures is in the national interest of the United States for compelling reasons:

- o Qualified aliens would be able to contribute more to U.S. society if they were able to participate in the open. Most illegal aliens are hardworking, productive individuals who already pay taxes and contribute to this country. Any adverse impact of their presence on the economy has already been absorbed.
- o The enactment of employers sanctions legislation would curtail further uncontrolled hiring of illegal aliens.
- o Legalization would enable the INS to target its enforcement resources on new flows of illegal aliens, and avoid devoting limited investigative resources to cases which involve the claims of aliens for equities under the law.

The Administration's bill permits immediate legalization of illegal aliens who entered the United States prior to January 1, 1980 and who have had a continuous residence in the United States

since that time, by providing a "temporary resident status" for such aliens. The proposal provides for adjustment of status to that of lawful permanent resident for these aliens after they have completed ten years of continuous residence.

Thus, the Attorney General, in his discretion, will be able to grant "temporary resident status" to any alien who entered the U.S. prior to January 1, 1980, who has continuously resided in the U.S. since that time, and who is otherwise admissible to the U.S. To be eligible for adjustment under this section the alien would be required to register with the INS during the 12-month period which the Attorney General establishes for registration for legalization. An alien granted temporary resident status must renew his status with the INS every three years.

An alien granted temporary resident status may not bring his spouse or children to the U.S. and is ineligible for benefits under Aid to Families with Dependent Children, Supplemental Security Income, the National Housing Act, Medicaid, and food stamps programs, but would be authorized to work by the Attorney General. This program attempts to deal with the reality of the situation today in practical terms, without intending to reward illegality.

The Administration has recommended that illegal aliens who have continuously resided in the United States since January 1, 1980 will be eligible for legalization. The Select Commission

estimated that under favorable conditions, as many as 60 percent of those illegal aliens now in the United States might qualify for legalization if the eligibility date were January 1980, and the legalization program began in January 1982. This could mean as many as 3.6 million aliens could apply, if one assumes the upper limit of the illegal alien population estimate as 6 million.

Previous amnesty plans, which proposed changes in Section 249 of the Immigration and Nationality Act, have provided an ongoing mechanism through which illegal aliens could establish eligibility for registration as permanent resident aliens. A drawn-out and piecemeal process for establishing eligibility for legalization, however, would only perpetuate an already serious problem. The Department, therefore, proposes a specified, 12-month, one-time only period during which applicants for legalization could come forward.

An examination of the experiences of other countries may be helpful to this Committee in determining the limits of the program. The time allotted for the Australian legalization program was only three months; the Canadian amnesty lasted only 60 days. Both of these periods proved to be too short. It was impossible to gain the trust of the illegal alien population or even communicate adequately to them the provisions of the programs within such short time spans. In the view of the Administration, a longer

eligibility period, such as one year, is more likely to reach an illegal alien population that represents a large strata of our society and one that may be less than trustful of the Government's intentions. If the time frame is unrealistically compressed, not all qualified illegal aliens will come forward to register under the INS-operated legalization program. Some will choose not to reveal their past lack of status; others will remain uncertain as to the program's benefits to them; and others simply will plan on returning to their countries of origin in the near future. The last would not be an unwelcome result. Certainly, some illegal aliens will go home -- not just those lacking the continuous residence requirement. A principal benefit to the Government of avoiding a drawn-out or continuously available legalization program is that it clears the way for swift and effective enforcement initiatives by INS to stem future flows.

It is anticipated that from 1.0 to 3.6 million persons might come forward and qualify under these circumstances. The experience of other legalization programs indicates that far fewer came forward than were expected or than could conceivably qualify. Only about one-third of the expected number came forward to register under the Canadian program.

The INS would depend on publicity through all media both to announce the basis for qualification under the legalization program

and to explain the availability of assistance from private and public agencies for preparing applications.

Aliens seeking legalization under the program would have to establish their date of birth, that they are employed or would be supported and would not become a public charge, that they entered the United States before January 1, 1980, and finally, that they have continuously resided in the United States since before that time. Examples of documents that could be used to prove residence would be: bankbooks, rent or tax receipts, licenses, birth or baptismal records of children born in the U.S., postmarked mail addressed to the individual; employment records; letters from business firms on letterhead paper giving specific dates of business dealings with the individual; letters from landlords showing the dates the individual lived on their property; utility receipts showing dates of service to the individual; and affidavits of credible witnesses who have personal knowledge of and can vouch for the continuity of residence of the individual. A report of medical examination on the standard INS form would also be required.

Unavoidably, the Administration's proposal to provide illegal aliens the opportunity for legalized status would place increased administrative and enforcement responsibilities on INS. INS would be required to screen and process the applications of those who

seek to qualify under the program. Moreover, the requirement for an applicant to furnish evidence of entry before a certain date and for a specified continuous period of residence would likely generate an increase in the use of fraudulent or forged documents. INS is exploring new administrative procedures for assuming this anticipated increase in workload with some degree of facility and without sacrificing the concerns of security and records integrity. INS recognizes the need to adopt more innovative and more flexible operational procedures to make the program workable.

The Department proposes a ten-year period of continuous residence to ensure a measure of fair and equitable treatment for all other applicants for benefits which fall within the provisions of the Immigration and Nationality Act. As you know, U.S. Consular officers around the world are required to report regularly to the Department of State all qualified applicants for numerically limited immigrant visas, as does the INS for all qualified applicants for adjustment of status. Today, the lists for many classes of immigrant visa applicants are oversubscribed. This simply means that more qualified persons seek to enter the United States than there are available visa numbers at any one time. Thus, spouses and unmarried sons and daughters of permanent resident aliens from Mexico have already been waiting six and

one-half years for a visa for permanent residence. In other categories waiting periods are as great as 11 years.

In proposing the 10-year continuous residence requirement, the Department is solicitous of the rights and entitlements of those who apply legally and wait patiently for benefits under the Act. Thus, it would be manifestly inequitable to extend the extraordinary benefits of permanent residency to an applicant in illegal status, while at the same time withholding a benefit from a qualified applicant who has complied with all of the necessary provisions of the law.

Considerations of equity are also the basis for restricting aliens who are granted temporary resident status from bringing their spouse or children to the U.S. and for denying them benefits under various social welfare programs. If we were to apply the long-standing principle of family reunification to illegal aliens seeking temporary resident status, we would be extending them greater benefits than are now available to permanent resident aliens already in the U.S. Many permanent residents must currently wait from two to six-and-a-half years before they can be joined by their families.

In a practical vein, we estimate that most illegal aliens who would qualify are either single or already have their families in this country, and under the proposed provisions, they would not be

forced to be separated from their families. Dependents already living in the U.S. would qualify for residency status in their own right, and would not face removal from their family. Even those who were required to be separated could return to their homeland for regular visits with their families. By qualifying for temporary resident status, the illegal alien gains substantial benefits: the unimpeded right to work; freedom of travel to his homeland; and eventually, permanent residence in the United States.

The entitlement to permanent residency in the United States is viewed as an extraordinary benefit and has never been accorded lightly under the law. Thus, a lengthy period of continuous residence is required today for creation of a record of lawful admission under Section 249 of the Act. A petitioner seeking a suspension of deportation under Section 244 of the law must be able to show continuous physical presence in the U.S. for at least seven years in some instances and ten years in others to qualify for relief.

The ten-year period of continuous residence prior to qualification for permanent resident status and the requirement of English language ability have been criticized by some groups as unnecessary and onerous. I have already spoken of fairness concerning persons who have waited patiently and legally for admission to the United States. A ten-year period of temporary

residence provides both the alien and the United States sufficient time to carefully consider the proper disposition and qualifications of the applicant for integration into our society. We would expect few if any of those otherwise qualified individuals who had spent ten or more years in the United States to be found lacking the minimal English language ability required by the law.

I should also point out that certain eligibility provisions for adjustment of status in the proposed legislation that pertains to Cubans and Haitians are more lenient than the ten-year residency provisions for illegal aliens.

Thus, the Cuban/Haitian proposal would allow most of the undocumented Cuban and Haitian entrants to regularize their presence by applying for a new "temporary resident" status. After five years of continuous residence in this country, such Cubans and Haitians could apply for permanent residence, providing they were self-sufficient, had minimal English language ability, and were not otherwise excludable.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and mentally ill, some of whom were forcibly expelled by Fidel Castro. Notwithstanding its moral obligations to do so under international law, the Cuban government has refused to allow these individuals to return to Cuba.

Furthermore, there is a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to Immigration and Naturalization Service proceedings.

With regard to this Cuban/Haitian class of approximately 160,000, there is little likelihood that the majority can ever be returned to their homelands. In fact, Congress has recognized the intrinsic difficulties in dealing with this class of undocumented arrivals and asylum claimants fairly and even-handedly, and has already provided them special benefits through the Fascell-Stone Amendment to the Refugee Education Act of 1980 during their tenure as Cuban/Haitian entrants.

The Administration endorses the position of the Select Commission on Immigration and Refugee Policy that a one-time legalization program is a necessary part of an effective enforcement program but the Administration does not believe that the United States should begin the process of legalization until new enforcement measures, such as employer sanctions, have been instituted to make it clear that we are determined as a nation to curtail new flows of illegal aliens.

The Administration realizes that without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Administration is opposed to any program that could precipitate such a movement. Further, the absence of effective enforcement could lead to a low participation rate in the legalization program. Continuation and enhancement of enforcement efforts in this country should encourage many illegal aliens to regularize their status under the legalization program. Thus aliens found as a result of INS operations during the 12-month period of the program would be given the opportunity to apply for consideration. Upon the conclusion of the 12-month program, however, any illegal alien apprehended, even if formerly technically qualified for this one-time program, would be immediately removed from the United States.

The policy of the United States regarding illegal aliens must be clear: this nation will offer legal permanent residence to those who illegally entered during a period of ambiguity in the United States' attitude towards illegal migration, but it will no longer tolerate the continued entry or employment of an illegal class of residents. I will be glad to answer any questions you have concerning the proposed program for affording illegal aliens temporary resident status in the United States.

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